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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 281

L. C. CAMPBELL, ET ALS., *Petitioners,*

v.

BEAVER BAYOU DRAINAGE DISTRICT, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS AND BRIEF IN SUPPORT THEREOF.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now L. C. Campbell, E. H. Polk, R. M. Wise, Riley Sanders, and W. G. Dinning, for themselves and for the benefit of other owners of real estate situated within Beaver Bayou Drainage District, who may desire to obtain the same relief, and respectfully petition this Honorable Court to grant a Writ of Certiorari to review the decision and judgment of the Supreme Court of Arkansas, rendered and entered in this cause on the 25th day of April, 1949, petition for rehearing having been denied on the 23rd day of May, 1949.

Decision and Judgment of the Court Below.

The majority opinion of the court below is yet unreported, and appears at pages 33 to 39 of the record herewith filed.

Nature of Cases and Summary Statement of the Matter Involved.

Beaver Bayou Drainage District was created by Act #370 of the Acts of 1920, of the State of Arkansas. It is a special act enacted at a special session at a time when special acts of the Legislature of the State of Arkansas were given little considertion by the Legislative body.

The conditions created by reason of such hasty and ill-considered legislation as to the future were corrected by the People of Arkansas by amendment Fourteen to the Constitution adopted October 5th, 1926, which prohibits the passage of any local or special acts by the legislature.

For the purpose of correcting the conditions already existing by reason of special and local acts passed before the adoption of the amendment to the Constitution, the legislature passed Act #227 of the Acts of 1927, which requires that all improvement districts theretofore created by special act should be subject, in the operation of their affairs, to the laws and provisions of the general statutes of the State of Arkansas which regulate the manner of operating improvement districts, and fixes the terms and conditions upon which a levy of an assessment may be made against the lands situated in the district. Among others this general law requires that a vacancy upon the board of commissioners shall be filled by the County Court. It also requires that notice be given to the owners of land of the district of the levy of any assessment or proposed levy of assessment against their lands which must be approved by the County Court. It also requires that plans of any proposed improvement be filed with the County Court for the inspection of the land owners. Ark. Sts. 1947 21-533.

Act #227 of the Acts of 1927, was construed by the Supreme Court of Arkansas in the case of *Berry* v. *Cousart Bayou Drainage District,* 181 Ark., 974, to mean that the act applied to all drainage districts created by special act.

In the instant case, the Supreme Court of Arkansas, overrules the Berry case in part, and ruled that Act #227 of the Acts of 1927 did not apply in a case where the district was being operated for maintenance purposes only, as in this case, and held that the original Act #370 of the Acts of 1920 is the one with which the present commissioners of the district are required to comply in the operation of the affairs of the district. That leaves for consideration before this Court the constitutionality of Act #370 of the Acts of 1920.

The question of the constitutionality of the Act was raised in the pleadings of the plaintiff, and specifically in the amendment to the complaint as offending the Fourteenth Amendment to the Constitution. The same question was argued at length in the brief of the appellant in the Supreme Court of Arkansas, and also in the motion for rehearing, and has been relied upon as a ground for relief from the inception of the litigation.

Beaver Bayou Drainage District comprises about 50,000 acres of land in Phillips County, Arkansas. This suit is brought by a number of the large land owners both for themselves, and for the benefit of possibly 1,000 other owners of small tracts of land situated within the District for relief against a condition which they consider intolerable.

The area of the District is comprised of three drainage basins, each of which is serviced by a canal constructed by the District at the time of the making of the original improvement, and each basin is distinct and separate from the other. The several canals discharge their flow into Big Creek at their several points of contact.

The whole bonded indebtedness of the District has long since been paid, and the District has acquired title to some 2,000 acres of land under foreclosure proceeding.

The board of directors are now undertaking to levy assessments upon all the lands situated within the District for the purpose of cleaning out a very small portion of only one of the canals of the District.

The purpose of this litigation is to cancel the levies of assessment which have been undertaken to be made against the lands of the District, which, by reason thereof, have become liens against all the lands within the District.

The land owners of the District, so long as there was a bonded indebtedness outstanding, submitted to the manner of handling the affairs of the district as directed by Act #370 of the Acts of 1920. Now, however, since the bonded indebtedness, and all other indebtedness have been fully paid, they feel that they are deprived of their property rights without due process of law by the manner in which the affairs of the District are now being managed.

They are insisting that the provisions of the Statute vest in the Directors or Commissioners named a power that is arbitrary and unrestrained, and the exercise of the powers given to the administrative body of the commissioners permits an abuse which is not permitted under the due process provisions of the Fourteenth Amendment.

Jurisdiction of the Court.

The jurisdiction of this Court is invoked under and by authority of Act of June 25, 1948, Chapter 646, Public Law 773, 28 U. S. C. A., Section 1257 (c), providing that final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari, where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States. Your petitioners alleged in the amendment to their original complaint that Act #370 of the Acts of 1920 of the State of Arkansas was repugnant to the Fourteenth Amendment to the Constitution of the United States; that the constitutionality of Act #370 of the Acts of 1920

was argued upon appeal to the Supreme Court of the State of Arkansas, both on original hearing and upon motion for rehearing. In its yet unreported decision the Supreme Court on the 25th day of April, 1949, ruled in favor of its constitutionality. Motion for rehearing was overruled on the 23rd day of May, 1949.

Questions Presented.

For their grounds the petitioners state:

1. The Supreme Court of Arkansas erred in refusing to adjudge that Act No. 370 of the Acts of 1920 was unconstitutional and void.

2. The Court erred in holding by inference that Act No. 370 of the Acts of 1920 was a valid enactment of the Legislature of the State of Arkansas.

3. The Court erred in holding that the board of commissioners of Beaver Bayou Drainage District have the right to exercise the powers and discharge the duties of their office as defined, and fixed by the provisions of Act No. 370 of the Acts of 1920.

4. The Court erred in finding that the board of directors of Beaver Bayou Drainage District had a legal right to levy an assessment against the lands situated in the District for the purpose of providing funds for maintenance.

Reasons Relied on for Allowance of the Writ.

Act #370 of the Acts of 1920 is unconstitutional and void. It offends the due process clause of the Fourteenth Amendment to the Constitution in the following respects:

I.

1. It creates a board of directors with power to perpetuate itself in office indefinitely by filling vacancies that may occur with persons to be selected by the remaining members of the board.

2. It authorizes the board of directors to maintain the existing improvements and to provide the funds therefor by levying assessments at will, and without the knowledge or consent and against the wishes of the property owners against the 50,000 acres of land in the District for the purpose of providing funds for maintenance purposes.

3. It has power to borrow an unlimited amount of money for the purposes of maintaining such improvements, and to issue bonds in an unlimited amount for the purpose of providing funds for that purpose, and to create a lien against the 50,000 acres of land in the district for the purpose of securing the repayment of such bonds, which said lien will be superior to the rights of any person except for taxes and for prior assessments.

4. It is required by the provisions of the Act, irrespective of the benefits to accrue to the several tracts of land by reason of the maintenance program, to levy an assessment against all the lands in the district based upon the original assessment levied for the purpose of providing funds for the original construction.

5. It permits the board of directors to use the funds arising from the levy of assessments in such manner as they may see fit and without accounting to the land owners or any court for the manner in which the funds are being used, or the purpose for which they are being applied.

6. It authorizes the board of directors to determine, without right of appeal to the land owners, that such expenditures are for maintenance purposes when in truth such expenditures may be improvements of a nature which it is not authorized to make.

We are insisting that the Act gives to the board of directors an unrestrained and arbitrary power which constitutes a plain abuse and deprives the owners of land in the district of their rights of property without redress of any kind, and for that reason offends the due process clause of the Fourteenth Amendment to the Constitution of the United States.

II.

The Act places in the hands of the board of directors the power and authority arbitrarily and without restraint to levy an assessment against the lands of the district and use the funds for the purpose of maintaining or improving any one of the drainage canals in any one of the three drainage basins, and to empower the said board of directors to collect from the owners of the land of the whole district, and to use the same for the purpose of improving and rebuilding the one canal which drains their own property to the exclusion of any benefits to the owners of land in the two other drainage basins in the district.

As shown by the testimony, the board of directors has the avowed purpose now of using the proceeds from the assessments already levied for the purpose of cleaning out a portion of one canal which serves the one basin in which their lands are situated. Such acts constitute a clear case of discrimination which denies to the other land owners in the district the equal protection that is granted under the Fourteenth Amendment to the Constitution of the United States.

Prayer of Petitioners.

WHEREFORE, your petitioners pray that a Writ of Certiorari be issued by this Court directed to the Supreme Court of Arkansas, to the end that the decision and judgment of that court in this cause may be reviewed by this Court as provided by law, and that upon such review the said decision and judgment be reversed.

L. C. CAMPBELL, ET ALS., PETITIONERS,

W. G. DINNING, JR.,
Solomon Building,
Helena, Arkansas,
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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

The essential facts of the case are fully stated in the Petition for Writ of Certiorari, and, in the interest of brevity, are not here repeated.

Specifications of Error to be Urged.

The Supreme Court of Arkansas in its majority opinion in this cause erred:

(1) In refusing to adjudge that Act No. 370 of the Acts of 1920 of the State of Arkansas was unconstitutional and void.

(2) In holding by inference that Act No. 370 of the Acts of 1920 of the State of Arkansas was a valid enactment of the Legislature of the State of Arkansas.

(3) In holding that the board of directors of Beaver Bayou Drainage District have the right to exercise the

powers and discharge the duties of their office as defined and fixed by the provisions of Act No. 370 of the Acts of 1920.

(4) In finding that the board of directors of Beaver Bayou Drainage District had a legal right to levy an assessment against the lands situated in the district for the purpose of providing funds for the contemplated improvements.

Argument.

The petitioners rely upon the following cases as authorities in support of this petition, to-wit: *Norwood* v. *Baker,* 172 U. S. 269; 43 L. Ed. 443; *Myles Salt Co.* v. *Commissioners of Iberia St. Mary's Drainage District,* 239 U. S. 478; 60 L. Ed. 392; *Harmon* v. *Bolley,* 187 Ind., 511; 2 A. L. R. 609; 120 N. E. 33.

Although the constitutionality of the Act #370 of the Acts of 1920 was raised in the original complaint, and specifically in the amendment to the complaint, in the argument in the brief on appeal to the Supreme Court of Arkansas, and on motion for rehearing, that court refused to consider that question. That fact, however, does not deprive the petitioners here of their right to ask for a hearing in this court. *Consolidated Coal Co., of St. Louis* v. *People of the State of Illinois,* 185 U. S. 203; 46 L. Ed. 873.

The Legislature has the authoirty, without offending the Fourteenth Amendment, to fix the boundaries of a district, and to fix the amount of funds that may be raised for the purpose of paying for the proposed improvement, but we do not find judicial authority for permitting the Legislative Body to fix the amount to be paid by the individual land owners as their portion of the cost of the improvement. *John C. Spencer* v. *Caroline L. Merchant,* 125 U. S. 345; 31 L. Ed. 763; *Wagner* v. *Lesser,* 239 U. S. 212; 60 L. Ed. 230.

The fixing of the amount of benefits to be charged against the several tracts of land in the district appears to be a judicial act which should be based upon a report of appraisers appointed for the purpose. *George Hagen* v. *Reclamation District 108,* 111 U. S. 701; 28 L. Ed. 569.

The case of *Harmon* v. *Bolley, supra,* we consider, a very thoughtful and careful review of the decisions of both the State of Indiana and of this Court. The conclusion is reached that the mere fact that the board of commissioners is required to fix the amount of the benefits for maintenance upon the same basis as that fixed for the original construction, offends the due process clause of the Fourteenth Amendment. The conclusion of the Court in that case appears to have been deliberately and carefully reached after a very thorough consideration of other cases in point.

The levy of the assessment by the board of directors in the instant case is both palpably arbitrary, and a plain abuse. It offends the due process clause, and is void. *Houck* v. *Little River Drainage District,* 239 U. S. 254; 60 L. Ed. 266.

If the effect of the levy of assessments is plainly discriminatory as in the case at bar, the case of *Myles Salt Co.* v. *Commissioners of Iberia St. Mary's Drainage District, supra,* is authority for the position that such act on the part of the board offends the equal protection clause of the Constitution, although the Act itself may be fair on its face.

It will be noted that the board of directors, under the powers of the Act under consideration, has authority to levy assessments against the property in the district at their will, in an amount that they may decide to be necessary, and as long as they deem necessary, and no longer, and to make additional improvements consisting of lateral ditches without the consent or approval of the land owners in the district, and without being required to account to any person, or any organization for the use of the funds coming into their hands as directors, all to be done without

notice to land owners, and against their wishes. This is held to be in violation of the Fourteenth Amendment in the case of *Norwood* v. *Baker, supra.*

The board of directors is authorized, under the Act, to borrow an unlimited amount of money for any purpose they may desire to use it, and to issue and deliver bonds as evidence of such indebtedness, which said bonds constitute a first lien against all the lands in the district, excepting former levies of assessments and State and County taxes. All this is done by the board of directors without notice, without knowledge on the part of the land owners, and against their wishes.

We believe that the case of *Norwood* v. *Baker, supra,* is authority for the fact that such conduct and such powers are arbitrary and a clear abuse.

In total disregard of the benefits to be received, the board of directors has undertaken to levy against the lands in the district assessments of benefits aggregating $12,000.00, for the year 1948, and this assessment has been based upon the assessment of benefits levied for the purpose of raising funds for the original improvement as required by the Statute. It is the avowed purpose of the board of directors to use these funds for the purpose of restoring to a useful condition a part of one canal which drains one of the drainage basins in the district, and this happens to be the basin in which their lands are situated. It will require from six to ten years for enough money to accumulate from the assessments as levied for the year 1948 to provide funds for restoring the one drainage canal to a condition of usefulness. During that period the owners of land in the two other drainage basins will be contributing their money without even the hope of receiving any benefit.

The rule applicable to both the due process provision and the equal protection provision of the Fourteenth Amendment has been stated in this court in the case of *Memphis and Charleston Railway Company* v. *C. L. Pace,* 282 U. S.

241; 51 S. Ct. 108; 75 L. Ed. 315; 72 A. L. R. 1096, as follows:

> "But, however the tax may be laid, if it be palpably arbitrary, and therefore a plain abuse of power, it falls within the condemnation of the due process clause (Houck v. Little River Drainage Dist. U. S., 254, 262, 265, 60 L. ed. 266, 273, 274, 36 S. Ct. 58, supra; Valley Farms Co. v. Westchester County, 261 U. S. 155, 67 L. Ed. 585, 43 S. Ct. 261, supra); and if it be manifestly and unreasonably discriminatory it falls within the condemnation of the equal protection clause (Gast Realty & Invest. Co., v. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523, 36 S. Ct. 254; Kansas City S. R. Co. v. Road Improv. Dist., 256 U. S. 658, 65 L. ed. 1151, 41 S. Ct. 604; Thomas v. Kansas City S. R. Co., 261 U. S. 481, 67 L. ed. 758, 43 S. Ct. 440; Road Improv. Dist. v. Missouri P. R. Co., 274 U. S. 188, 71 L. ed. 992, 47 S. Ct. 563)."

We feel that the Supreme Court of Arkansas has committed error in refusing to pass upon and adjudge to be unconstitutional Act No. 370 of the Acts of 1920.

Conclusion.

It is, therefore, apparent that the decision of the Supreme Court of Arkansas holding that the Act No. 370 of the Acts of 1920 of the State of Arkansas was not repugnant to the Fourteenth Amendment to the Constitution of the United States is in direct conflict with the decisions of this Court.

Your petitioners, therefore, pray that this Court issue its Writ of Certiorari herein and that upon final hearing the judgment rendered herein by the Supreme Court of Arkansas be reversed.

Respectfully submitted,

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Helena, Arkansas,
Attorney for Petitioners.

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CHARLES ELMORE CROP
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L. C. CAMPBELL, ET ALS., *Petitioners,*

v.

BEAVER BAYOU DRAINAGE DISTRICT, *Respondent.*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BEAVER BAYOU DRAINAGE DISTRICT, *Respondent.*

STATEMENT AND RESPONSE.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Respondent District, Beaver Bayou Drainage District of Phillips County, Arkansas, moves the Court to deny the Petition for Writ of Certiorari for the following reasons:

1. Petitioners are owners of real estate within the Respondent District, but they are not entitled to a Writ of Certiorari to review a decision of the Supreme Court of the State of Arkansas simply because they are landowners in the District.

2. The Petitioners make many allegations in their statement of the case, but cite no part of the record as proof

therefor. As a matter of fact there is nothing in the record to support any allegations made in the Petitioners statement of the case.

3. The Respondent District was not created by Act 370 of the Acts of 1920, but as a matter of fact was organized and created under the terms and provisions of Act 92 of the Acts of 1907, as amended by Act 379 of the Acts of 1911 and Act 154 of the Acts of 1913.

4. Act 370 of the Acts of 1920 was simply enacted for the purpose of enlarging the powers of the Respondent District and the assessment of benefits against the lands within the Respondent District was duly made under the terms and provisions of Act 92 of the Acts of 1907 and the Acts amendatory thereto, and not under Act 370 of the Acts of 1920. Furthermore, this proceeding does not involve the making of an assessment of benefits, but involves authority of the Board of Directors to levy a tax against the unexpended benefits for the purpose of raising funds to maintain ditches and canals previously constructed (R. 33-34).

5. This Court is not concerned with the validity of special legislation under the Constitution of the State of Arkansas, and consequently all references made thereto in the Petitioners' statement do not raise Federal questions and are not matters for this Court.

6. The decision of the Supreme Court of the State of Arkansas deciding this District was not governed by Act 227 of the Acts of 1927 has no bearing on the Constitutionality of Act 370 of the Acts of 1920 and the Petitioners have no vested right under the rule of law announced in *Berry* v. *Cousart Bayou Drainage District*, 181 Ark. 974. See *Patterson* v. *Colorado*, 205 U. S. 454, 51 L. Ed. 879.

7. Petitioners did not attack the Constitutionality of Act 370 of the Acts of 1920 on the ground it was in conflict with the Fourteenth Amendment to the Federal Constitution, but on the contrary alleged in their pleading that it violated

the terms and provisions of the Fifth Amendment to the Federal Constitution (R. 4).

8. The Board of Directors are not undertaking to levy an assessment upon the lands situated within the Respondent District, but on the contrary are levying a tax against the unexpended assessment of benefits, which assessment was made on March 16, 1914, for the purpose of maintaining the ditches within the District.

9. The attack made by the Petitioners is on the method of administration by the Board of Directors in levying a tax against the assessment of benefits (R. 9, 14, 15, 31 and 34).

10. Act 370 of the Acts of 1920 is in no way repugnant to the Fourteenth Amendment to the Federal Constitution and none of the acts and things complained of as set forth in subdivision 1, Items 1 to 6, pages 5 and 6 of the Petition for Writ of Certiorari, have deprived these Petitioners of any of the rights conferred upon them by the "due process" clause of the Fourteenth Amendment of the Federal Constitution. Furthermore, the manner of administration and management of the fiscal affairs of a drainage district is a matter which addresses itself to the Legislature and not to the Courts.

11. There is no dispute that when the assessment of benefits was made there was ample provision for notice, hearing and appeal, and all Acts of the General Assembly of the State of Arkansas governing the Respondent District have fully complied with the "due process" clause of the Fourteenth Amendment of the Federal Constitution.

12. The Petition for Writ of Certiorari is not in accordance or in compliance with the rules of this Court in that allegations are made without citing proof in the record and in that all allegations in reference to the ditches and canals to be maintained, the District having acquired large number of acres of land by foreclosure proceedings and to the

effect the suit was brought for the benefit of many others beside themselves, are irrelevant and not germane to the issues presented herein.

WHEREFORE, Respondent prays that the Petition for Writ of Certiorari be denied, and for all other proper relief.

BEAVER BAYOU DRAINAGE DISTRICT,
Respondent,

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Helena, Arkansas,
Attorney for Respondent.

IN THE

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BRIEF IN SUPPORT OF RESPONSE.

Summary of Argument.

In brief the reasons that the Petition for Writ of Certiorari should be denied are:

1. Act 370 of the Acts of 1920 meets all requirements of the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

2. There is no Federal question presented.

3. All questions raised by the Petitioners have been previously decided by this Court.

ARGUMENT.

Act 370 of the Acts of 1920 meets all Constitutional Requirements and There is no Federal Question Involved.

It cannot be denied, and must be conceded, that the original assessment of benefits levied against the lands within the Respondent District met and fulfilled every statutory requirement, and that the Acts under which the assessment was made expressly and specifically provided that notice should be given and that every landowner who felt himself aggrieved by the assessment be given an opportunity to be heard. These Acts, therefore, fully complied with the provisions of the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

Petitioners predicate their petition to this Court for a Writ of Certiorari not on the ground that the assessment of benefits was made in such a manner as would impinge upon the Fourteenth Amendment, but on the ground that the General Assembly of the State of Arkansas has conferred too broad and liberal powers upon the Directors of the Respondent District. These were matters which addressed themselves to the law-making body of the State of Arkansas and not to the Courts.

Petitioners contend that Act 370 of the Acts of 1920 offends the "due process" clause of the Fourteenth Amendment in the following respects:

1. That the Board of Directors have the power to fill vacancies and therefore can perpetuate themselves in office. *This is not a Federal question.*

2. That it authorizes the Board of Directors to maintain the existing improvements and to provide funds by levying a tax on the assessment of benefits. *This does not raise a Federal question* for the reason that when the assessment of benefits were made every landowner was given notice and had an opportunity to be heard.

3. That the Act in question conferred power upon the Board of Directors to borrow an unlimited amount of

money and to issue bonds for that purpose. *This does not raise a Federal question* and could only become a Federal question if and when taxes were levied in excess of the benefits assessed. This is not an issue before the Court.

4. That it conferred authority upon the Board of Directors to levy a tax (not an assessment of benefits) upon the lands for maintenance. *This also is not a Federal question.*

5. That said Act conferred upon the Board of Directors the right to use the funds at will and without accounting to the landowners. This is not true, but even if it were it would be an administrative matter and *not a Federal question.*

6. That it conferred authority upon the Board of Directors to determine without right of appeal that the expenditures would be used for maintenance purposes. Even if this was true, *the same would not raise a Federal question.*

It is our understanding under the rules of this Court, that the Petitioner seeking to invoke a Writ of Certiorari to review the decision of the State Court, has the burden of showing the Court that a Federal question is involved. This has not been done and calls for a denial of the Petition for Writ of Certiorari.

> *Honeyman* v. *Hanan*, 300 U. S. 14, 81 L. Ed. 476.
> *Southwestern Bell Telephone Co.* v. *State of Oklahoma*, 303 U. S. 206, 82 L. Ed. 751.

At this point it is relevant to note that this Court denied Certiorari in a case which involved the identical questions raised by the Petitioners herein.

> *Beck* v. *Missouri Valley Drainage District of Holt County*, 46 Fed. (2d) 632, 84 A. L. R. 1089; Cert. denied, 284 U. S. 618.

Inasmuch as this Court is called upon to decide on a Petition for Writ of Certiorari, the Constitutionality of

Act 370 of the Acts of 1920, we have deemed it expedient and also an accommodation to the Court to set forth in full the terms and provisions of this Act and to make it Appendix I to this Brief. Under the rules of the Court, this should have been done by Counsel for Petitioners, but in view of the fact he did not deem it advisable, we have done so for the convenience of the Court.

The Court will readily observe, upon reading the Act, that it does not violate the "due process" clause of the Fourteenth Amendment to the Federal Constitution in any respect.

We wish to call the Court's attention to the fact that Counsel for petitioners have greatly confused the issues of law here presented by asserting that the Respondent District was created under the terms and provisions of Act 370 of the Acts of 1920. Act 370 of the Acts of 1920 only enlarged the powers theretofore conferred upon the Respondent District under the terms and provisions of Act 92 of the Acts of 1907, as amended by Act 379 of the Acts of 1911 and further amended by Act 154 of the Acts of 1913. Petitioners have not questioned the Constitutionality of the prior Acts nor could it be done for the reason these Acts fully complied with the Fourteenth Amendment by giving the landowners notice and an opportunity to be heard. The taxes now being collected against the lands within the Respondent District were not levied under the terms and provisions of Act 370 of the Acts of 1920, but were levied under prior Acts. As a matter of fact, no provision is made in Act 370 of the Acts of 1920 for the levying of a tax on the assessment of benefits, but power was conferred upon the Directors of the Respondent District to maintain the improvements and keep the canals and ditches cleaned out. The tax levy now sought to be questioned was levied under the original Acts creating the District.

It is true that Act 370 of the Acts of 1920 validated and confirmed the assessment of benefits—this the Legislature

had the right to do. Such State legislation has been upheld by this Court in many cases.

Spencer v. *Merchant*, 125 U. S. 345, 31 L. Ed. 763.
Kansas City S. R. Co. v. *Road Imp. Dist. No. 3*, 266 U. S. 379, 69 L. Ed. 335.
Charlotte Harbor & Northern Railway Co. v. *W. G. Wells, et al.*, 260 U. S. 8, 67 L. Ed. 100.

The Petitioners consistently refer to the assessment of benefits as being arbitrary, unreasonable and a plain abuse, and yet there is not one item of evidence in the entire record in this case which even raises this question.

It is true that Act 370 of the Acts of 1920 conferred upon the Board of Directors of the Respondent District the power to fill vacancies on the Board. Such legislative enactments have been upheld by our Supreme Court. An Act of the Legislature conferring authority upon the Board of Directors to fill vacancies does not impinge upon the "due process" clause of the Fourteenth Amendment to the Federal Constitution. The manner of electing or appointing officers of an improvement district and the manner of administration is a matter vested solely in the State and this Court has so held.

Soliah v. *Heskin*, 222 U. S. 522, 56 L. Ed. 294.
Hibben v. *Smith*, 191 U. S. 310, 48 L. Ed. 195.

In *Soliah* v. *Heskin, supra*, the Court said:

> "The supreme court of the state held that, while taxes could only be levied by elected officers, special assessments for benefits conferred by such drains might be imposed by appointed officers, and that the statute offorded due process of law. So far as the Federal questions are concerned, the judgment must be affirmed. For—
>
> "1. The 14th Amendment does not deprive a state of the power to determine what duties may be performed by local officers, nor whether they shall be appointed, or elected by the people. Dreyer v. Illinois, 187 U. S.

72, (2) 83, 47 L. Ed. 79, 85, 23 Sup. Ct. Rep. 28, 15 Am. Crim. Rept. 253; Prentis v. Atlantic Coast Line R. Co., 211 U. S. 210, 53 L. Ed. 150, 29 Sup. Ct. Rep. 67; Mobile County v. Kimball, 102 U. S. 706, 26 L. Ed. 242; Fallbrook Irrig. Dist. v. Bradley, 164 U. S. 112, 167, 41 L. Ed. 369, 391, 17 Sup. Ct. Rep. 56."

Under Section 3 of Act 370 of the Acts of 1920 the Directors of the Respondent District were given the authority to change plans and to build additional canals, but before doing so this section specifically provides the changed plans must be filed with the County Clerk and notice given for two weeks so as to give the landowners an opportunity to be heard. The landowners are given twenty days after the date of hearing to file proceedings. This section is not here involved, but we call the Court's attention to the fact that this Act fully complied with the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

The Board of Directors was also given authority under Section 8 of this Act to reassess the benefits, but any reassessment of benefits would have to be done after giving notice and with limitations for complaints as provided for in the original assessment.

The Board of Directors under Sections 6 and 7 of this Act were authorized and directed to maintain the existing improvements and to keep the canals and ditches cleaned out, and for this purpose were authorized and directed to levy a tax on the original assessment of benefits, but as previously stated, the procedure for the levying of the tax for maintenance is given under Act 154 of the Acts of 1913 and not under Act 370 of the Acts of 1920.

We have called the Court's attention to the several provisions of Act 370 of the Acts of 1920 for the purpose of showing to the Court that this Act deals with the administrative affairs of the District. This Act was passed for the purpose of enlarging the power and authority of the Board of Directors of the Respondent District. It is apparent from the record in this case that this was the inter-

pretation placed upon the Act by Counsel for Petitioners for the reason that the issues in question raised in the Lower Court and the Supreme Court of Arkansas deal exclusively with the administrative affairs of the District. They alleged and contended that the powers conferred upon the Board of Directors are arbitrary and capricious, but there is no evidence in the record that the Directors have acted in an arbitrary and capricious manner so as to bring such acts within the purview of the Fourteenth Amendment.

This Court has, in many cases, decided that administrative affairs of an improvement district are matters which address themselves to the State. For instance, under Act 370 of the Acts of 1920 the Legislature of the State of Arkansas conferred authority upon the directors of the Respondent District to maintain the improvements by keeping the canals and ditches cleaned out; they are authorized to borrow money and to pledge the assessment of benefits, and to pay for the work out of the assessment of benefits theretofore levied. These powers so conferred upon the Directors do not violate the Fourteenth Amendment to the Constitution. It has been so held by this Court. In *Houck* v. *Little River Drainage District*, 239 U. S. 254, at page 262 the Court said:

> "It was equally within the power of the state to create tax districts to meet the authorized outlays. The legislature, unless restricted by the state Constitution, can create such districts directly, or, as in this case, it may provide for their institution through a proceeding in the courts in which the parties interested are cited to appear and present their objections, if any. The propriety of a delegation of this sort was a question for the state alone. And with respect to districts thus formed, whether by the legislature directly or in an appropriate proceeding under its authority, the legislature may itself fix the basis of taxation or assessment; that is, it may define the apportionment of the burden, and its action cannot be assailed under the 14th Amendment unless it is palpably arbitrary and a

plain abuse. Hagar v. Reclamation Dist., 111 U. S. 701, 709, 28 L. Ed. 569, 572, 4 Sup. Ct. Rep. 663; Spencer v. Merchant, 125 U. S. 345, 353, 356, 31 L. Ed. 763, 766, 767, 8 Sup. Ct. Rep. 921; Fallbrook Irrig. Dist. v. Bradley, 164 U. S. 112, 167, 168, 41 L. Ed. 369, 17 Sup. Ct. Rep. 56; Bauman v. Ross, 167 U. S. 548, 42 L. Ed. 270, 17 Sup. Ct. Rep. 966; Parsons v. District of Columbia, 170 U. S. 45, 42 L. Ed. 943, 8 Sup. Ct. Rep. 521; Williams v. Eggleston, 170 U. S. 304, 42 L. Ed. 1047, 18 Sup. Ct. Rep. 617; Norwood v. Baker, 172 U. S. 269, 43 L. Ed. 443, 19 Sup. Ct. Rep. 187; French v. Barber Asphalt Paving Co., 181 U. S. 324, 45 L. Ed. 879, 21 Sup. Ct. Rep. 625; Wight v. Davidson, 181 U. S. 371, 45 L. Ed. 900, 21 Sup. Ct. Rep. 616; Wagner v. Leser, 239 U. S. 207, 36 Sup. Ct. Rep. 66."

This Court Has Previously Decided All Questions Raised Herein.

There is another cogent reason why the Petition for Writ of Certiorari here presented should be denied. Under Rule 38, Subdivision 5 (a) of the rules of this Court it is expressly provided that this Court generally will not review a decision of a State Court where the questions presented have already been determined by this Court. All questions raised herein have been presented, passed on and decided contrary to the arguments of the Petitioners.

> *Soliah* v. *Heskin, supra; Spencer v. Merchant, supra; Hibben v. Smith, supra; Houck v. Little River Drainage District, supra;* and *Brieholz v. Pocahontas County,* 257 U. S. 118, 66 L. Ed. 159.

The petition in this case falls squarely within the rules of law announced in *Brieholz* v. *Pocahontas County, supra.* The Court will observe that in this case, where the facts are somewhat similar to the facts here, it was held that the statutory provision did not violate the "due process" clause of the Fourteenth Amendment. The Court will further observe that five out of the seven cases relied upon by the Petitioners are discussed in that case. In that case,

as now contended here, it was claimed that the failure to provide for new notice and hearing on a tax levy for maintenance violated provisions of the Fourteenth Amendment. At page 123 the Court said:

> "The contention that a new notice and hearing were not required in this case by the due process provision of the 14th Amendment is a sound one. We are dealing with the taxing power of the State of Iowa, exerted through the familiar agency of a regularly organized drainage district, which, it is admitted, properly included, and by the system of drainage adopted benefited, the lands of the plaintiffs in error. It is admitted also that their lands were lawfully assessed to pay for the original drainage construction in the same proportion to benefits as that which was applied in this case to the cost of the improvements and repairs. Thus, Myles Salt Co. v. Iberia & St. M. Drainage Dist., 239 U. S. 478, 60 L. Ed. 392, L. R. A. 1918E 90, 36 Sup. Ct. Rep. 204, and Gast Realty & Invest. Co. v. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523, 36 Sup. Ct. Rep. 254, which are much relied upon, are plainly inapplicable.
>
> "The provision of the section assailed, that the cost of repairs shall be assessed upon the lands of the District in the same proportion that the original cost was assessed, since it only requires a simple calculation to determine the amount of each assessment when the cost of the improvement is once determined, is a legislative declaration that the lands will be benefited; and that, in such case, notice and hearing before such a legislative determination are not necessary, is settled by many decisions of this Court; among others Hagar v. Reclamation Dist., 111 U. S. 701, 28 L. Ed. 569, 4 Sup. Ct. Rep. 663; Spencer v. Merchant, 125 U. S. 345, 31 L. Ed. 763, 8 Sup. Ct. Rep. 921; Embere v. Kansas City & L. B. Road Dist., 240 U. S. 242, 60 L. Ed. 624, 36 Sup. Ct. Rep. 317; Phillip Wagner v. Leser, 239 U. S. 207, 60 L. Ed. 230, 36 Sup. Ct. Rep. 66; Houck v. Little River Drainage Dist., 239 U. S. 254, 60 L. Ed. 266, 36 Sup. Ct. Rep. 58 and Branson v. Bush, 251 U. S. 182, 64 L. Ed. 215, 40 Sup. Ct. Rep. 113.
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> "The only possible source of objection remaining is the committing to the board of supervisors the power

to determine, without notice and hearing, when repairs are necessary and the extent of them. But these are details of state administration with which the Federal authority will not interfere, except, possibly, to prevent confiscation or spoliation, of which there is no suggestion in this case."

The Petition for Writ of Certiorari filed herein, in our opinion falls squarely within the rules of law announced in the above cited case. The Court will also observe that in *Brieholz* v. *Pocahontas County, Supra,* this Court held that the case of *Myles Salt Co.* v. *Iberia & St. M. Drainage Dist., supra,* was not applicable. In the Petition filed herein the Petitioners likewise rely principally upon that decision. If it was inapplicable in the *Brieholz* v. *Pocahontas Company, supra,* case it is likewise not applicable here.

WHEREFORE, Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

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Attorney for Respondent.

APPENDIX.

ACT 370.

AN ACT GRANTING ENLARGED POWERS TO BEAVER BAYOU DRAINAGE DISTRICT.

Be It Enacted by the General Assembly of the State of Arkansas:

Section 1. That all acts of the Commissioners and other officers of Beaver Bayou Drainage District, being a drainage district created by Act Number 154 of the Acts of 1913, approved March 11th, 1913, are hereby ratified and confirmed.

Section 2. It is found and declared that each of the assessments of benefits against the several tracts and parcels of land and railroad right-of-ways as shown by the assessment roll of list adopted by the Board and certified by the President and attested by the Secretary on March 16, 1914, in the several amounts shown in the column of said list headed "Total Amount of Special Benefits by Reason of the Improvements," as severally reduced by the several respective amounts shown in the column headed "Amount Heretofore Assessed and Collected" are equitable and just and they are hereby approved and confirmed, and shall exist as the assessment of benefits in said district until changed as herein provided.

Section 3. The directors of said Beaver Bayou Drainage District shall have power to add to the improvements therein by deepening or widening any of the channels, drains, ditches or laterals to an extent greater than shown on the plans now on file, or by building additional laterals, and if they shall find it to the best interest of the land owners in the district to change or supplement the plans now on file, they shall have prepared and filed with the county clerk of Phillips County plans showing the changes in the original plans, and this may be done from time to time as occasion may arise therefor. On the filing of such

changed or supplemental plans, the county clerk shall cause to be published in some newspaper published in Phillips County, once a week for two weeks a notice, which may be in the following form:

TO THE OWNERS OF LAND IN BEAVER BAYOU DRAINAGE DISTRICT.

Notice is hereby given that the directors in Beaver Bayou Drainage District have filed in my office plans showing changes in the original plan of drainage in said district. All land owners in the district are hereby notified that these plans are open to their inspection, and that if they deem that the assessment of benefits against any lands in said district will become inequitable because of said changes in the plans, they shall file in my office, within twenty days after publication of this notice, a petition that the assessment of the benefits against such lands be corrected.

.....

County Clerk of Phillips County

If the commissioners or any property owners deem that because of such change in plans the assessment of benefits against any lands in the district has become inequitable, they shall file with the county clerk, within twenty days after the second publication of the notice herein provided for, a petition in which shall be set forth the description of the lands that the petitioner considers should be reassessed, and thereupon the commissioners shall proceed to reassess the benefits against the lands described in such petition, and shall appoint a day for a hearing thereon, and the Secretary of the board of directors shall cause to be published in some newspaper published in Phillips County, once a week for two weeks, a notice, which may be in the following form:

NOTICE.

Notice is hereby given that the directors of Beaver Bayou Drainage District will meet on the ..... day of ....., 19..., at ....., in ....., at ..... o'clock ...m., for the purpose of hearing any complaints against their reassessment of the benefits against the following lands:

(Here describe lands).

occasioned by the change in plans filed with the county clerk on the ..... day of ....., 19....

.....
Secretary.

On the date and hour named in such notice, the directors shall attend at the place named and hear all persons who desire to be heard on the reassessment of benefits against the lands described in such notice, and shall equalize them by raising or lowering any of them so that they shall be equitable and just. When their assessment shall be completed, they shall file a certificate to this effect with the county clerk of Phillips County. Anyone not beginning proceedings attacking any of such changed assessments of benefits within twenty (20) days after the date of the hearing aforesaid, or after the certificate aforesaid has been filed with the county clerk, shall be deemed to have waived any objection he may have thereto, and shall not be heard to complain thereof in law or equity.

No changes shall be made in the present assessment of benefits to an extent that will reduce the aggregate amount shown on the assessment list now in force.

Section 3. Peter A. Diesch, D. T. Hargraves, Wellford White, Sebastian Straub and E. M. Allen are appointed directors for said Beaver Bayou Drainage District, and

each shall take an oath and file it with the county clerk of Phillips County, within thirty (30) days after the passage of this Act, that he will well and truly perform his duties as a director of said district, and each of the directors shall hold office until the completion of the improvements and other purposes of the act creating the district and the acts amendatory thereof are complied with, and all the indebtedness of the district has been paid. Vacancies in the board shall be filled by the remaining members, except that in the event three or more vacancies shall exist at any one time, the county court of Phillips County, shall fill the vacancies until there are three members on the board, and the three members shall fill the remaining vacancies.

Section 4. The secretary and treasurer of the board of directors shall be selected by the board, and shall respectively hold their position during the pleasure of the board, and shall be entitled to such compensation from time to time as the board shall deem fit.

Section 5. The board of directors is authorized and empowered to change the existing levy of the installments of the existing assessment of benefits, and to make new levies from time to time, so that the income of the district shall be adequate to meet its expenses and pay its debts as they mature, but no levy shall at any time be made that will not provide sufficient funds to meet the outstanding indebtedness of the district as it matures and provide sufficient funds annually for the maintenance of the improvements, with a reasonable margin for delinquencies and unforeseen contingencies.

Section 6. It is found and declared that the cleaning out of the drainage ditches and canals in the district as they now exist will benefit the lands in said district in the proportion shown by the assessment of benefits now in force, and the directors are authorized, if they deem it advisable, in advance of the making of any plans for additional drainage in said district, to clean out the existing canals and

ditches therein, and to pay therefor out of the assessment of benefits now in force, and for this purpose and for the purpose of carrying out any other plans for the improvement, they shall have all power to borrow money, issue bonds or other negotiable instruments and to arrange for their security and payment as is provided by the act creating the district and the amendments thereto for the borrowing of money to make the improvements, and all indebtedness incurred for these purposes shall be a lien on the assessment of benefits now or hereafter made on the lands in the district, prior and paramount to all other liens except the lien for general taxes or taxes and assessments previously levied in this or other improvement districts.

Section 7. It is found and declared that the maintenance of the existing improvements and the maintenance of the improvements that may be made under any changes or additional plans in said district, will benefit the lands in the district in the proportion that the lands are benefited by the making of the improvements according to the original plans or the changed plans, and the directors are authorized and directed to constantly maintain such improvements by keeping the canals and ditches cleaned out and open and to pay therefor from the assessment of benefits, and they shall have power to borrow money from time to time for this purpose, and issue negotiable instruments, instruments or bonds for its repayment in such form as the directors deem fit, and to secure the same by a pledge or mortgage of the assessment of benefits.

Section 8. If at any time the directors consider that the assessment of benefits as a whole has become inequitable, they may order the assessors to make a reassessment of the benefits in the entire district, which shall be done in the manner, after the notice, with the effect, and with the limitations for complaint as provided for the original assessment of benefits in the district, and such reassessment of benefits when completed shall be the assessment of benefits

in the district. No reassessment shall reduce the aggregate amount of the assessment of benefits now in force in said district.

Section 9. That Sections 6 and 9 of said Act Number 154 of the General Assembly of the State of Arkansas of the session for the year 1913, approved March 11th, 1913, are hereby repealed.

Section 10. That 26 of said Act Number 154 of the General Assembly of the State of Arkansas of the session of the year 1913 be amended to read as follows:

> "Section 26. The members of the board of directors shall each receive $5.00 per day and their necessary expenses while attending to the work of the district, and all other officers and agents shall receive such sums as shall be fixed by the board of directors, and said board shall have the right to employ such other agents and attorneys not herein mentioned as may in its judgment from time to time be necessary, and to provide for their compensation."

Section 11. This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and this act shall take effect and be in force immediately on and after its passage.

Approved February 26, 1920.